

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

FILED
CHARLOTTE, N. C.

NOV 23 1999

U. S. DISTRICT COURT
W. DIST. OF N. C.

SPIROFLOW SYSTEMS, INC.,
a North Carolina corporation,

Plaintiff,

v.

NATIONAL BULK EQUIPMENT, INC.,
a Michigan corporation,

Defendant.

Civ. A. No.

3:99cv471-P

COMPLAINT (Jury Trial Demanded)

PARTIES

1. Plaintiff Spiroflow Systems, Inc. ("Spiroflow"), by change of name from Spiroflow-Orthos Systems, Inc., is a corporation duly organized under the laws of the State of North Carolina having a principal place of business at 2806 Gray Fox Road, Monroe, NC 28110.

2. Defendant National Bulk Equipment, Inc. ("NBE") is a corporation duly organized under the laws of the State of Michigan having a principal place of business at 12838 Stainless Drive, Holland, MI 49424.

JURISDICTION

3. This civil action arises under the Patent Laws of the United States, United States Code, Title 35, Section 1 et seq., and in particular, 35 U.S.C. § 271.

4. Jurisdiction is proper in this Court under the provisions of 28 U.S.C. § 1338(a) in that the claims of the Complaint arise under the Patent Laws of the United States.

5. Venue is proper in this Court as to the Defendant under 28 U.S.C. § 1391(b)(1), (b)(2), and (c), and 28 U.S.C. § 1400(b).

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331.

7. NBE has sufficient contacts with North Carolina to justify the assertion of personal jurisdiction over it by this Court.

FACTUAL BACKGROUND

8. Spiroflow and NBE both design and manufacture various types of industrial machinery. Most importantly for purposes of this action, Spiroflow and NBE both design and manufacture machinery intended to efficiently control the discharge of material from bags that are positioned such that, in the absence of such machinery, the primary bag opening allows the material in the bag to be discharged from the bag.

9. Spiroflow is the owner of all right, title, and interest in and to U.S. Pat. No. 5,787,689 ("the '689 Patent"), entitled "BAG DISCHARGE CONSTRICTION APPARATUS AND METHOD FOR CONSTRICTION CONTROL," which issued on August 4, 1998.

10. Spiroflow has recently learned that NBE is practicing and/or has practiced methods and/or machinery that infringe one or more claims of the '689 Patent.

CLAIM FOR RELIEF
PATENT INFRINGEMENT

11. NBE has infringed and continues to infringe one or more claims of the '689 Patent by making, using, selling, and offering for sale in this District and elsewhere, products and/or methods that come within the scope of the '689 Patent, all in violation of the Patent Laws of the United States, including, inter alia, 35 U.S.C. § 271.

12. NBE has knowledge of the '689 Patent; despite that knowledge, NBE continues to make, use, sell, or offer for sale infringing products and/or methods, and therefore willfully infringes the '689 Patent.

13. These acts of infringement are irreparably harming and causing damage to Spiroflow and will continue to do so unless and until restrained by this Court.

PRAYER FOR RELIEF

WHEREFORE, Spiroflow prays:

A. That this Court, in accordance with 35 U.S.C. § 283, preliminarily and permanently enjoin NBE from infringing the '689 Patent and engaging in any advertising or sales of its infringing products and/or methods;

B. That Spiroflow be awarded judgment against NBE for damages resulting from NBE's infringement of the '689 Patent, and that such damages be trebled in accordance with provisions of 35 U.S.C. § 284, and that Spiroflow be awarded its reasonable attorneys' fees in accordance with 35 U.S.C. § 285;

C. That this Court award Spiroflow interest, costs, and such further relief that this Court deems just and equitable;

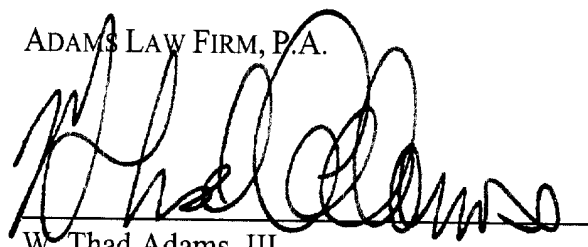
D. That this Court order NBE to pay Spiroflow all its reasonable taxable costs in a sum and manner deemed appropriate by this Court based on the deliberate and willful infringement by NBE as set forth in this Complaint; and

E. That all triable issues be tried by jury.

DATE: November 23, 1999

Respectfully submitted,

ADAMS LAW FIRM, P.A.

A handwritten signature in black ink, appearing to read 'W. Thad Adams, III', written over a horizontal line.

W. Thad Adams, III
Attorney for Plaintiff

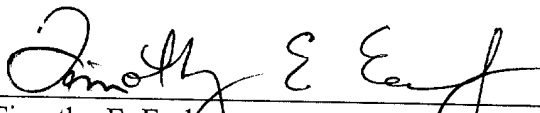
OF COUNSEL:

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301 S. Tryon Street
Charlotte, NC 28282
(704) 375-9249

VERIFICATION OF COMPLAINT

Timothy E. Early, being first duly sworn, deposes and says that he is the Vice President of Plaintiff Spiroflow Systems, Inc., that he has read the attached Complaint, and that the statements made therein are true except as to those matters stated upon information and belief, and as to those matters, he believes them to be true.

This, the 29th day of October, 1999.



Timothy E. Early
Vice President, Spiroflow Systems, Inc.

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Carmine E. Sloan, hereby certify and acknowledge that Timothy E. Early, Vice President of Spiroflow Systems, Inc., after being duly sworn, appeared before me this day and executed the foregoing Verification of Complaint.

This, the 29th day of October, 1999.

Notary Public

My Commission Expires: ~~My Commission Expires~~ September 24, 2002

SEAL